

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3

4 BLOCKCHAIN MINING SUPPLY AND)
SERVICES LTD.,)

5 Plaintiff,)

6 vs.)

7 SUPER CRYPTO MINING, INC.)
8 n/k/a DIGITAL FARMS, INC. and)
9 DPW HOLDING, INC. n/k/a AULT)
GLOBAL HOLDINGS, INC.,)

10 Defendants.)
11 _____)

Civil Action No.
1:18-cv-11099-ALC

12
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14
15 REMOTE VIDEOTAPED DEPOSITION OF DARREN MAGOT,
16 INDIVIDUALLY AND AS 30(b)(6) WITNESS FOR SUPER
17 CRYPTO MINING, INC. N/K/A DIGITAL FARMS, INC.

18 Costa Mesa, California

19 Friday, January 20, 2023
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22

23 Stenographically Reported by:

24 Tami L. Le, CSR No. 8716, RPR

25 Job No. 220470

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January 20, 2023

8:40 a.m.

Remote Videotaped Deposition of DARREN MAGOT,
INDIVIDUALLY AND AS 30(b)(6) WITNESS FOR SUPER
CRYPTO MINING, INC. N/K/A DIGITAL FARMS, INC., held
via Zoom video conference with all participants
appearing remotely, before Tami L. Le, Registered
Professional Reporter and Certified Shorthand
Reporter No. 8716 in the State of California.

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20
21
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24 THE VIDEOGRAPHER:

25 John M. Reidt

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WITNESS: DARREN MAGOT

EXAMINATION

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BY MR. MANDEL

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1 BY MR. MANDEL:

2 Q. Were there other entities that he
3 mentioned at that time as well?

4 A. There were. I can't remember what
5 entities were held by the company at that time, but
6 Super Crypto was the most interesting to me.

7 Q. And what was it that interested you
8 about Super Crypto?

9 A. I was interested in the space, and I
10 felt that I was qualified to help develop this type
11 of business.

12 Q. And when you say "the space," can you
13 explain what space you're referring to.

14 A. Sure. Just the leading-edge crypto
15 market that was evolving at the time.

16 Q. Had you had any experience with
17 cryptocurrency prior to coming to work at
18 Super Crypto?

19 A. As a hobby, I had interest in it. I had
20 read --

21 Q. As an investor?

22 A. -- quite a bit.

23 Yes.

24 Q. And when you began working for
25 Super Crypto, what was the nature of its business?

1 A. The nature of its business was to buy
2 crypto miners and get them running and producing
3 cryptocurrency.

4 Q. And when you say "crypto miners," can
5 you just explain what a crypto miner is.

6 A. Sure. It's a small computer that solves
7 equations and earns bitcoin as a reward.

8 Q. Now, I noticed on your LinkedIn profile,
9 it looks like you list your current company as
10 Ault & Company, Inc.; is that correct?

11 A. My LinkedIn isn't very current. I don't
12 update that, but that -- I think that is the last
13 entry I made years ago.

14 Q. Just tell me what Ault & Company, Inc.,
15 is.

16 A. Ault & Company is a privately held
17 holding company that I'm an investor in.

18 Q. And is Ault & Company, Inc., a
19 shareholder in DPW?

20 MR. VOLYNSKY: Objection; form.

21 THE DEPONENT: I don't believe so. Not
22 that I can recall.

23 BY MR. MANDEL:

24 Q. Okay. And when I say "DPW," I know the
25 company has changed names and, I guess, became

1 BitNile and maybe now Ault Alliance; is that right?

2 A. Correct.

3 Q. If I refer to them as "DPW," you'll
4 understand that I'm referring to the parent company?

5 A. Right. Yes.

6 Q. And so your understanding is you don't
7 think that Ault & Company, Inc., actually owns any
8 stock in DPW?

9 MR. VOLYNSKY: Objection; form. That's
10 not what he said.

11 BY MR. MANDEL:

12 Q. Well, does -- let me rephrase.

13 Does Ault & Company own any stock in
14 DPW?

15 A. I don't recall.

16 Q. And what's your position with
17 Ault & Company, Inc.?

18 A. I'm a member of the board.

19 Q. How many individuals are members of that
20 board?

21 A. It varies. I don't know exactly how
22 many.

23 Q. Do you know approximately?

24 A. I would say five, if I had to guess.

25 Q. Do you know offhand who any of the other

1 members of the board of Ault & Company, Inc., are?

2 A. Mr. Ault and Mr. Will Horne.

3 Q. And Mr. Ault and Mr. Horne, are they
4 both members of the board of Super Crypto?

5 A. Yes.

6 Q. And you're also a member of the board of
7 Super Crypto; correct?

8 A. Correct.

9 Q. And Mr. Ault and Mr. Horne are also both
10 members of the board of DPW; correct?

11 MR. VOLYNSKY: Objection; form.

12 THE DEPONENT: Correct.

13 BY MR. MANDEL:

14 Q. Are you a member of the board of DPW?

15 A. No.

16 MR. MANDEL: I'm going to mark as Magot
17 Exhibit 2 a document bearing Production
18 No. DEFENDANT_4703 through 4705. And it's now
19 in the chat room.

20 (Plaintiff's Exhibit 2 was subsequently
21 marked for identification.)

22 BY MR. MANDEL:

23 Q. Once you've had a chance to open it, my
24 first question is have you ever seen Exhibit 2
25 before?

1 A. I don't recall seeing it.

2 Q. Okay. Well, I'm -- let's take a look at
3 the second page of Exhibit 2. And in this email
4 from Mr. Ault, there's certain information about
5 Super Crypto Mining. I just want to ask you about
6 it.

7 In the second sentence, it says:

8 "The company already has over
9 1400 miners specifically S9 and
10 L3."

11 Do you recall how the company acquired
12 those miners?

13 MR. VOLYNSKY: Objection; form.

14 BY MR. MANDEL:

15 Q. Well, let me -- let me actually first
16 ask you, do you know if it's accurate that, as of
17 approximately January -- strike that.

18 As of approximately February 22nd, 2018,
19 do you know whether it's accurate that Super Crypto
20 had over 1400 miners?

21 A. I don't recall the exact count, but we
22 did make purchases of those -- of miners, so...

23 Q. And do you recall who you made purchases
24 from?

25 A. I do. A number of different parties.

1 Q. Can you describe them.

2 A. Sure. One of the subsidiaries,
3 Coolisys, sold us a number of miners. There were
4 some local gentlemen in California. I'm spacing on
5 their name right now. But they sold us miners.

6 Part of my role was just to identify the
7 best price and the quantities that we wanted to
8 purchase based on funding we had.

9 Q. Other than Coolisys and the individual
10 in California whose name you can't remember at the
11 moment, were there any other entities from which
12 Super Crypto had purchased miners in the early days
13 of its formation?

14 MR. VOLYNSKY: Objection; form.

15 THE DEPONENT: Yeah, I think -- there
16 was one other -- I mentioned California. I
17 believe there was a group in L.A., and there
18 was a group in San Diego. So maybe right off
19 the bat, those three come to mind.

20 BY MR. MANDEL:

21 Q. And what about an entity named Indiana
22 or a location in Indiana? Does that mean anything
23 in terms of miners that were acquired?

24 A. Not miners that were acquired.

25 Q. What, if any, business did Super Crypto

1 undertake in Indiana?

2 A. We had a data center in Indiana, where
3 we placed miners and operated miners.

4 Q. And what kind of relationship, if any,
5 did Super Crypto have with the data center?

6 MR. VOLYNSKY: Objection; form.

7 THE DEPONENT: They were a location that
8 would take these unique machines and place
9 them in their data -- in their data center.

10 BY MR. MANDEL:

11 Q. And did you take --

12 A. We're a customer.

13 Q. I'm sorry?

14 A. We were a customer to them.

15 Q. And were you renting space from them?

16 A. Yes.

17 Q. But the machines were actually owned by
18 you?

19 A. Correct.

20 Q. And I know the entity -- strike that.

21 I know that at some point Super Crypto
22 changed its name to Digital Farms; is that correct?

23 A. Yes.

24 Q. Was there also another entity that had
25 Digital Farms in its name that Super Crypto did

1 business with?

2 A. Yes.

3 Q. Who is that entity that Digital Farms --
4 that Super Crypto did business with?

5 A. Digital Farms Management. Is that the
6 name?

7 Q. And where was that company located?

8 A. That company consisted of two gentlemen
9 that focused on finding locations to put crypto
10 miners, and I connected with them, and they were the
11 ones that found the location in Indiana for us. And
12 so they managed that relationship with the data
13 center.

14 Q. So they would find locations where you
15 could place these machines?

16 A. Correct.

17 Q. And how would they -- well, strike that.
18 Did you compensate them from that?

19 A. Yes, they took a spread from whatever
20 their --

21 Q. When you say -- I'm sorry.

22 A. -- the data center charged them.

23 Q. Sorry about that.

24 When you say "took a spread," what does
25 that mean?

1 A. Well, I imagine they had a profit. So
2 they -- you know, I had a need to operate X number
3 of machines. They found a location in South Bend,
4 Indiana. They managed a build-out of that data
5 center, an expansion.

6 And it was set up specific to crypto
7 mining because of the unique requirements of a lot
8 of air flow, something that's not traditional for
9 most data centers. They managed that build-out and
10 funded that build-out, and we compensated them.
11 It's a monthly fee for electric and a fee to run
12 that site.

13 I'm not aware of the relationship they
14 had with the data center, but they managed that data
15 center relationship.

16 Q. Were you also compensating the data
17 center in Indiana separately from Digital Farms?

18 A. No.

19 Q. And are you familiar with an entity
20 named SMS?

21 A. Yes.

22 Q. And what is SMS?

23 A. SMS is a data center located in
24 Orange County, California.

25 Q. And did Super Crypto have any kind of

1 relationship with them?

2 A. Customer relationship.

3 Q. And was that direct -- directly with
4 them rather than through Digital Farms?

5 A. It was.

6 Q. And you would place the machines at
7 their data center?

8 A. Exactly, yes.

9 Q. What about Lord Abstract? Does that
10 mean anything to you?

11 A. Yes.

12 Q. What is Lord Abstract?

13 A. Lord Abstract is a group that would help
14 us identify miners to purchase.

15 Q. Did they perform a similar service to
16 what Digital Farms did?

17 A. No. They -- they would help us locate
18 and purchase bitcoin miners.

19 Q. Oh, actually purchase the machines
20 themselves?

21 A. Correct.

22 Q. And would you buy machines from them, or
23 they would arrange for the purchase with some other
24 entity?

25 A. We bought machines from them.

1 Q. Where were they located?

2 A. Los Angeles.

3 Q. Is that the entity you were thinking of
4 before?

5 A. It is, yes.

6 Q. Okay. Now, when Super Crypto began
7 purchasing the miners, where did it get the funds
8 from to buy those machines?

9 A. Advances from our parent company.

10 Q. Did the parent company actually pay for
11 the machines?

12 A. You mean write the check?

13 Q. How did it work? Did the parent company
14 directly contract with the entities, or did they
15 advance money to Super Crypto and then Super Crypto
16 entered into the arrangement?

17 MR. VOLYNSKY: Objection; form.

18 THE DEPONENT: They would advance money
19 to us, and we would buy the equipment.

20 BY MR. MANDEL:

21 Q. Did Super Crypto have any source of
22 funds with which to buy equipment other than what
23 was made available to it by the parent?

24 MR. VOLYNSKY: Objection; form.

25 THE DEPONENT: The -- initially,

1 advances from the parent were how we funded
2 purchases of the machines, but then we did
3 produce revenue from those machines.

4 BY MR. MANDEL:

5 Q. And let's talk about the revenues that
6 were produced. If you'd look back at Exhibit 2, the
7 page we were looking at, the second page of
8 Exhibit 2, it says at the end of that first
9 paragraph:

10 "At present by the end of
11 March, we expect the revenue run
12 rate to be about \$700,000 a
13 month."

14 Do you know whether Super Crypto ever
15 achieved that level of revenues?

16 A. I don't recall. It's such a moving
17 target because of all the factors that go into it,
18 bitcoin mining revenue.

19 Q. If you look below that, it says:

20 "We use approximately
21 6.3 million as our estimates for
22 2018."

23 Do you know approximately how much
24 revenue Super Crypto generated during its first year
25 of operation?

1 25,000, without guessing?

2 A. Are we going to keep doing this? I
3 don't -- I'm just going to say I don't know. Let's
4 defer to a document. You've requested one.

5 Q. Okay. Now, it's correct that the
6 company ceased operations in 2020; correct?

7 A. Yes.

8 Q. And the company never showed a profit;
9 correct?

10 A. Correct.

11 Q. It's fair to say that its expenses
12 exceeded its revenues throughout its existence;
13 correct?

14 MR. VOLYNSKY: Objection; form.

15 THE DEPONENT: Yes, I believe -- I
16 believe so.

17 BY MR. MANDEL:

18 Q. Now, when the company ceased operations,
19 did it have any cash on hand as an asset?

20 A. No.

21 Q. Did the company ever have any cash as an
22 asset?

23 A. I would say no.

24 Q. Did the company have cryptocurrency as
25 an asset?

1 A. Cryptocurrency was being produced, but
2 always used to pay bills, so there was no extra
3 balance on hand.

4 Q. So whatever revenues were generated from
5 cryptocurrency were used to pay the expenses of the
6 company?

7 A. Yes.

8 Q. And when the company ceased operations,
9 it didn't have any cryptocurrency that remained on
10 hand as an asset; correct?

11 A. Correct.

12 Q. And the company owned machines; correct?

13 A. Yes.

14 Q. Were those machines eventually sold?

15 A. Yes.

16 Q. Do you know when they were sold?

17 A. I don't recall the date.

18 Q. Was it in the last year?

19 A. No.

20 Q. The last two years?

21 A. It might have been the last two -- two
22 or three years ago.

23 Q. And do you know to whom the machines
24 were sold?

25 A. Yes.

1 Q. Who were they sold to?

2 A. To two entities. One was the data
3 center in Indiana bought a portion of them, and the
4 other one was a group out of, I believe, Alabama
5 that bought a portion of them.

6 Q. And approximately how much in revenue
7 did Super Crypto receive from those sales?

8 MR. VOLYNSKY: Objection; form.

9 THE DEPONENT: I have to look back. I
10 want to say a little over 300,000. Maybe
11 400,000.

12 BY MR. MANDEL:

13 Q. So your best estimate is somewhere in
14 the range of 3- to \$400,000?

15 A. Yes. I'd like to look at the documents
16 again to refresh my --

17 Q. That's fine.

18 A. -- memory.

19 Q. I don't have any of those documents, so
20 that's why, for now, I'm just asking for your best
21 estimate.

22 And what did Super Crypto do with the
23 money that was generated from those sales?

24 A. An escrow was set up in the name of
25 Super Crypto, and the money sits there in that

1 escrow account.

2 Q. And it continues to sit there today?

3 A. Yes.

4 Q. And why is that money being held in
5 escrow?

6 MR. VOLYNSKY: Objection; form.

7 THE DEPONENT: The lawyers --

8 MR. VOLYNSKY: Nah --

9 THE DEPONENT: Oh.

10 BY MR. MANDEL:

11 Q. Okay. You aren't able to answer that
12 without revealing legal advice that you may have
13 received?

14 A. Correct.

15 Q. Okay. That's fine. Thank you.

16 Does Super Crypto currently have any
17 outstanding obligations?

18 MR. VOLYNSKY: Objection; form.

19 THE DEPONENT: SMS data center, we had a
20 debt to them, and it was never resolved.

21 BY MR. MANDEL:

22 Q. I'm sorry. That's with SMS, you said?

23 A. Yes.

24 Q. And what is the amount that SMS claims
25 that is owed?

1 MR. VOLYNSKY: Objection; form.

2 THE DEPONENT: You're asking me to
3 recall five years ago. I'm guessing \$200,000,
4 250,000, possibly.

5 BY MR. MANDEL:

6 Q. And how, if at all, was that resolved?

7 A. There were a number of letters and
8 threats of lawsuits, and eventually they dropped it.
9 So I think they decided it wasn't worth pursuing.

10 Q. Okay. So, as best as you know, that
11 matter is no longer active?

12 A. I haven't heard from them, and I'm not
13 sure if they've sent anything to the company, but
14 I -- I'm not aware of anything.

15 Q. Other than SMS, are you aware of any
16 other outstanding obligations that Super Crypto has?

17 A. I can't recall. I think I resolved all
18 the others.

19 Q. Does Super Crypto currently have an
20 obligation, to your understanding, to our client,
21 Blockchain?

22 A. I don't believe so, but that's why we're
23 here today.

24 Q. So, as you sit here today, it's your
25 belief that Super Crypto itself doesn't owe any

1 money to Blockchain?

2 MR. VOLYNSKY: Objection; asked and
3 answered.

4 BY MR. MANDEL:

5 Q. You can answer.

6 A. I don't believe so.

7 Q. And what's the reason why you believe
8 that?

9 A. Because we had a contract with an out
10 clause, and I lost my deposit.

11 Q. And is that a view that you ever
12 expressed to anybody at Blockchain during your
13 dealings with them?

14 MR. VOLYNSKY: Objection; form.

15 THE DEPONENT: I would imagine I have.

16 BY MR. MANDEL:

17 Q. Well, I'm not asking you what you would
18 imagine.

19 Do you know whether you did express it?

20 A. I don't recall.

21 Q. Is that a view that you ever expressed
22 to anyone at DPW?

23 A. Yes. The contract states that, in my
24 mind.

25 MR. MANDEL: So let's mark as Exhibit 3

1 Q. Do you recall when the first time that
2 you ever reviewed Section 3 was?

3 A. It would have been before we signed
4 this.

5 Q. And did you discuss Section 3 at the
6 time with anybody at DPW?

7 A. Yeah, it was part of our planning for
8 this -- this agreement and back and forth with
9 Willy.

10 Q. Well, I'm asking you specifically about
11 Section 3, you're saying was part of the
12 back-and-forth?

13 A. Yes.

14 Q. Okay. And do you recall -- did you --
15 do you recall whether you had discussions with --
16 about that clause with Mr. Ault?

17 A. I'm sure I did.

18 Q. And what do you recall saying about it?

19 A. Well, the purpose of Section 3, in my
20 mind, was to give us an out if we weren't able to
21 raise the funds to purchase all the machines. I
22 wanted all the machines. There was high risk in
23 that Section 3, though, because I would lose my
24 deposit, but it gave me the out that I would need in
25 case funding didn't come in as I had hoped.

1 600 machines and PSU's)."

2 That's what you wrote at the time?

3 A. Yes.

4 Q. And so is it fair to say that as of
5 April 19, 2018, you believe that Super Crypto owed
6 \$1.6 million to Blockchain for the purchase of the
7 next 600 machines?

8 A. Yes, we were doing all we could to get
9 more equipment.

10 Q. Well -- and it's also correct that you
11 told Mr. Ault that you believed you owed that money
12 to Blockchain; correct?

13 A. I see what you're saying. I don't
14 believe I've used the word "owed." There was an
15 opportunity to buy equipment from them, and I wanted
16 to buy it.

17 Q. Right. But you didn't say we have an
18 opportunity to buy. You said, "We also still owe
19 the following"; correct?

20 That's the language you used at the
21 time; correct?

22 MR. VOLYNSKY: Objection; form.

23 THE DEPONENT: Did I say "owed"? I
24 don't see where I say "owed."

25 ///

1 BY MR. MANDEL:

2 Q. Well, if you go down --

3 (Simultaneous speaking.)

4 A. Oh, "We still also owe" -- got it.

5 Yeah, the context of that is if we want
6 to buy them, we owe that.

7 Q. Right. But that's not what you said;
8 right? You said you owe --

9 MR. VOLYNSKY: Objection -- sorry.

10 Objection; form.

11 THE DEPONENT: That's what I meant to
12 mean.

13 BY MR. MANDEL:

14 Q. Okay. And at the top of the entire
15 email, you say:

16 "Since the Super Crypto bank
17 account is shut down could you
18 help me make the following
19 payments that are due this week?"

20 Correct?

21 A. Yes.

22 Q. So what you were listing below were what
23 you're reporting to be obligations of Super Crypto;
24 correct?

25 A. Correct.

1 Q. Now, do you know, as of April 19th,
2 2018, what the fair market value of the 600 machines
3 was?

4 A. I don't know the exact amount.

5 Q. Well, separate and apart from whether
6 you know the exact amount, do you know whether it
7 was more or less than the amount that you had agreed
8 to pay Blockchain?

9 MR. VOLYNSKY: Objection; form.

10 THE DEPONENT: And I would say less.

11 BY MR. MANDEL:

12 Q. And what's the basis for saying it's
13 less?

14 A. The market had started to crash.

15 Q. Do you know when it started to crash?

16 A. I don't recall the -- no.

17 Q. Do you recall whether the approximate
18 per-machine cost was around \$2900 under the
19 Blockchain agreement?

20 MR. VOLYNSKY: Objection; form.

21 THE DEPONENT: I'd have to look back,
22 but it sounds familiar. I think in that
23 range.

24 BY MR. MANDEL:

25 Q. And do you have any sense of what the

1 range was of what you believe those machines were
2 worth as of April 19th, 2018?

3 MR. VOLYNSKY: Objection; form.

4 THE DEPONENT: You have to understand
5 there is no, like, store you go buy them at.
6 So there's an open market, and the price
7 varied.

8 BY MR. MANDEL:

9 Q. And how are you able to determine what
10 the market bears at any particular time?

11 MR. VOLYNSKY: Objection; form.

12 THE DEPONENT: By what they're being
13 offered from the different suppliers and
14 different companies that make the equipment.

15 BY MR. MANDEL:

16 Q. And how were you able to see that? Is
17 that information that's presented on websites?

18 A. Oh, yeah, some websites. A lot of just
19 independent sellers.

20 Q. And did you follow fairly closely the
21 market during the relevant time period of 2018?

22 MR. VOLYNSKY: Objection; form.

23 THE DEPONENT: Yes.

24 BY MR. MANDEL:

25 Q. How did you go about doing that?

1 A. I was connected to both the companies
2 that sell -- sold this equipment, as well as
3 different vendors that I would buy different things
4 from.

5 Q. And would you look at any public
6 websites for pricing information?

7 A. Sure.

8 Q. Do you recall which websites at the time
9 you would review?

10 A. Bitmain. INNOSILICON was another
11 supplier. Those are probably the two largest.

12 Q. And did you also talk to various
13 contacts to ascertain pricing information from them?

14 A. I would.

15 Q. And how regularly were you doing that
16 during the period of April 2018?

17 A. Probably at least weekly. Information
18 would come across my desk.

19 Q. So it's fair to say you had a pretty
20 good pulse on what the market was like at the time;
21 correct?

22 A. I believe so.

23 Q. And if we look back at Exhibit 3, you
24 know, you pointed to Clause No. 3, which said that
25 in the event you fail -- purchaser fails to pay the

1 balance to vendor on or before April 15, 2018, the
2 deposit funds shall be forfeited to the vendor.

3 So did you consider, as of April 15th,
4 2018, whether you should just walk away from the
5 last 600 machines?

6 MR. VOLYNSKY: Objection; form.

7 THE DEPONENT: Yes.

8 BY MR. MANDEL:

9 Q. And did you actually discuss that with
10 anyone?

11 A. I believe so. We -- I believe.

12 Q. Who did you discuss that with?

13 A. Probably -- I don't know if I discussed
14 it with Willy, but I definitely discussed it with my
15 internal team.

16 Q. And was anybody suggesting that you
17 should walk away from the last 600 machines?

18 MR. VOLYNSKY: Objection; form.

19 I'm just going to instruct the witness,
20 to the extent there were discussions with
21 counsel, not to disclose those.

22 BY MR. MANDEL:

23 Q. Other than counsel. I'm not asking
24 about any conversations with lawyers.

25 A. Yeah. I would say at that time, we made

1 the business decision to try to continue purchasing
2 equipment.

3 Q. And if the value of the machines had
4 declined as of April 15th, 2018, why would you want
5 to go forward and still purchase them at the price
6 shown in the Asset Purchase Agreement with
7 Blockchain?

8 A. We were still trying to honor the
9 relationship the best we could, and it was hard to
10 predict how quickly it would drop. You know, I
11 would say that the fluctuations in this new market
12 aren't predictable, so we were hopeful that they
13 would increase again and they weren't too far out of
14 whack at that point.

15 Q. So you didn't think that, as of
16 April 15th, they were too far out of whack with what
17 you were paying, or agreeing to pay?

18 MR. VOLYNSKY: Objection; form.

19 THE DEPONENT: I believe so.

20 BY MR. MANDEL:

21 Q. And when you say you were hopeful, you
22 had the expectation that prices might increase in
23 the future; correct?

24 A. Yeah. Always optimistic in that regard.

25 Q. And it's fair to say that bitcoin is a

1 very volatile asset; correct?

2 A. Yes.

3 Q. And that's true of all cryptocurrency;
4 correct?

5 A. It seems to be.

6 Q. That's its history; right?

7 A. So far, yes.

8 Q. And that was its history as of 2018;
9 correct?

10 A. Yes.

11 Q. And you knew that when you entered into
12 the business at Super Crypto; correct?

13 A. Yes. Anyone in this space I believe
14 knew that.

15 Q. And you knew that when you entered into
16 the contract with Blockchain; correct?

17 A. Yes.

18 Q. And you made an assessment that the
19 prices you were agreeing to pay under that contract
20 were a reasonable business risk to take; correct?

21 MR. VOLYNSKY: Objection; form.

22 THE DEPONENT: Yeah, the key was having
23 an out.

24 BY MR. MANDEL:

25 Q. Right. The key was having an out,

1 you're saying, but you knew that the risk was that
2 the prices could go up or the prices could go down;
3 correct?

4 MR. VOLYNSKY: Objection; form.

5 THE DEPONENT: Yes.

6 BY MR. MANDEL:

7 Q. Is that right?

8 A. Yes.

9 Q. And when the time came for what you're
10 referring to as an out, as of April 15, 2018, you
11 made an assessment as to whether to exercise what
12 you're calling as an out; correct?

13 MR. VOLYNSKY: Objection; form.

14 THE DEPONENT: I was still operating
15 under my -- as a CEO to do whatever I could to
16 keep the company running and buy equipment.

17 BY MR. MANDEL:

18 Q. Well, that's the assessment you made as
19 the CEO; correct?

20 A. Yes.

21 Q. That it was in the best interest of the
22 company to do whatever it could to keep acquiring
23 machinery; correct?

24 MR. VOLYNSKY: Objection; form.

25 THE DEPONENT: Yes.

1 BY MR. MANDEL:

2 Q. And you made that decision because you
3 had hopes and expectations that you would be able to
4 turn a profit eventually from owning more machines;
5 correct?

6 MR. VOLYNSKY: Objection; form.

7 THE DEPONENT: That's always the hope.

8 BY MR. MANDEL:

9 Q. And when you made that assessment in
10 April 15 -- strike that.

11 When the date came that you're referring
12 to in the contract, as of April 15, you made an
13 informed decision that what you wanted to do was go
14 forward and have the machines; correct?

15 MR. VOLYNSKY: Objection; form.

16 THE DEPONENT: I didn't see that date as
17 a hard date. I was looking at that as a
18 flexible date, the same way that Willy looked
19 at the other dates, as flexible dates.

20 BY MR. MANDEL:

21 Q. Did you ever say that to Willy?

22 A. No.

23 Q. Did you ever even mention Clause 3 once
24 in your entire months of communications with Willy?

25 MR. VOLYNSKY: Objection; form.

1 THE DEPONENT: Yeah, I'm sure we
2 talked -- we talked about all the clauses in
3 the document.

4 BY MR. MANDEL:

5 Q. After the contract was entered into and
6 finalized, did you ever once mention Clause 3 in a
7 discussion with Willy?

8 A. I don't recall.

9 Q. Are you aware of a single written
10 communication in which you ever indicated that you
11 had the ability to walk away from the 600 machines?

12 MR. VOLYNSKY: Objection; form, asked
13 and answered.

14 THE DEPONENT: I don't recall.

15 BY MR. MANDEL:

16 Q. Isn't it true that any communication you
17 had regarding the 600 machines consistently
18 reiterated your desire to complete the purchase?

19 MR. VOLYNSKY: Objection; form.

20 THE DEPONENT: I don't recall.

21 BY MR. MANDEL:

22 Q. Isn't it true that as of April 2015
23 [sic], you still wanted to buy the 600 machines?

24 A. Yes.

25 Q. And you were prepared to do it at the

1 price shown in the Asset Purchase Agreement?

2 MR. VOLYNSKY: Objection; form.

3 THE DEPONENT: That was the only option
4 on this contract.

5 BY MR. MANDEL:

6 Q. And did that view change at any point in
7 the ensuing six months?

8 MR. VOLYNSKY: Objection; form.

9 THE DEPONENT: I stayed focused on
10 trying to purchase the equipment from Willy.

11 BY MR. MANDEL:

12 Q. And, in fact, you continued to make
13 payments, didn't you, toward the purchase of the 600
14 machines?

15 A. I believe so. We tried -- well, I don't
16 know if we made any payments. I don't recall.

17 Q. All right. Well, we'll look at that,
18 then.

19 A. Yeah.

20 MR. MANDEL: Let's mark as Exhibit 5 a
21 document bearing Production No. DEFENDANT_4337
22 through 4346.

23 (Plaintiff's Exhibit 5 was subsequently
24 marked for identification.)

25 MS. CHESTUKHIN: For the record, that

1 list?

2 A. That is fair.

3 Q. And at the top of that list of
4 obligations is Blockchain Mining; correct?

5 A. Yes.

6 Q. And you list that as \$1.6 million that
7 needs to be paid; correct?

8 A. Yes.

9 Q. You don't indicate that you can walk
10 away from that obligation, do you?

11 MR. VOLYNSKY: Objection; form.

12 THE DEPONENT: No.

13 BY MR. MANDEL:

14 Q. Is it fair to say that as of May 2nd,
15 2018, you believed that Super Crypto owed Blockchain
16 Mining \$1.6 million?

17 MR. VOLYNSKY: Objection; form.

18 THE DEPONENT: I wouldn't say it says we
19 owe them. It shows that I wanted to buy
20 equipment still.

21 BY MR. MANDEL:

22 Q. Well, my question is: Is it fair to say
23 that you believed you owed it to them as of May 2nd,
24 2018?

25 MR. VOLYNSKY: Objection; form.

1 THE DEPONENT: No. My mindset is that I
2 want to buy equipment, and if I want to buy
3 equipment, I need to pay this to get the
4 equipment from them.

5 BY MR. MANDEL:

6 Q. And did you ever tell Willy at any point
7 that he should sell the machines to somebody else?

8 A. I don't think I did.

9 Q. In fact, wasn't one of your concerns
10 that if you didn't pay him, you might lose those
11 machines?

12 A. Yes.

13 Q. You didn't think that you could just
14 keep your, what you call as an out, open
15 indefinitely and expect Blockchain to just hold on
16 to the machines, did you?

17 MR. VOLYNSKY: Objection; form.

18 Are you testifying for him?

19 THE DEPONENT: I was surprised Willy
20 didn't sell the machines, but he chose to hang
21 on to them.

22 BY MR. MANDEL:

23 Q. Because he chose to continue to deal
24 with you when you told him you were working on
25 payment for them; correct?

1 MR. VOLYNSKY: Objection; form.

2 THE DEPONENT: We were trying to pay for
3 them.

4 BY MR. MANDEL:

5 Q. And he took you at your word when you
6 said you were trying to pay for them; correct?

7 MR. VOLYNSKY: Objection; form.

8 THE DEPONENT: His actions demonstrated
9 that.

10 BY MR. MANDEL:

11 Q. And his words; correct? Didn't he keep
12 telling you that time and time again?

13 MR. VOLYNSKY: Objection; form.

14 THE DEPONENT: I don't know. He would
15 ask for payment.

16 BY MR. MANDEL:

17 Q. He asked for payment, but he continually
18 told you he was willing to work with you on the
19 timing of the payment; correct?

20 MR. VOLYNSKY: Objection; form.

21 THE DEPONENT: I believe so.

22 MR. MANDEL: Let's mark as Exhibit 7 a
23 document bearing Production No. DEFENDANT_4356
24 to 4357.

25 ///

1 had signed; correct?

2 MR. VOLYNSKY: Objection; form.

3 THE DEPONENT: That was the price in the
4 contract.

5 BY MR. MANDEL:

6 Q. And in this email, after the amount
7 owed, it says:

8 "After sending 5K on 6/14."

9 Does that indicate that a payment of
10 \$5,000 had been made on June 14th?

11 A. It appears so, yes.

12 MR. MANDEL: Let's mark as Exhibit 10 a
13 document bearing Production No.
14 DEFENDANT_4689.

15 (Plaintiff's Exhibit 10 was
16 subsequently marked for identification.)

17 BY MR. MANDEL:

18 Q. Is Exhibit 10 an email that you sent to
19 Mr. Ault on October 7th of 2018?

20 A. Let's see. That's a strange email
21 address in the "from" line, but let me read it here.

22 It looks like an email I would send.

23 Q. And in the first sentence, you say:

24 "As requested, please find the
25 details around the remaining

1 outstanding balances for SCM."

2 Is it fair to say you were summarizing
3 for Mr. Ault monies that you considered owed by
4 Super Crypto at that point in time?

5 A. Yeah. This shows what I'd like to pay.

6 Q. Well, you refer to them as "outstanding
7 balances"; correct?

8 A. Correct.

9 Q. "Outstanding balances" means it's money
10 owed; correct?

11 MR. VOLYNSKY: Objection; form.

12 THE DEPONENT: It's semantics, but yes.

13 BY MR. MANDEL:

14 Q. And if you look down, Blockchain Mining
15 is listed there as one of the outstanding balances;
16 correct?

17 A. Correct.

18 Q. So it's fair to say that as of
19 October 7th, 2018, at least, you believed that
20 Super Crypto owed more than a million and a half
21 dollars to Blockchain; correct?

22 A. We were still trying to buy those
23 machines, yes.

24 Q. And you still believe you owed that
25 money to Blockchain; correct?

1 A. Yes.

2 Q. And so when you decided you didn't owe
3 the money to Blockchain was after they sued you for
4 it; correct?

5 MR. VOLYNSKY: Objection; form.

6 THE DEPONENT: No.

7 BY MR. MANDEL:

8 Q. Well, when did you decide that they
9 didn't owe you [sic] the money?

10 A. But your words --

11 MR. VOLYNSKY: Object --

12 THE DEPONENT: -- are owed. This is --
13 again, I wanted to buy equipment, and I would
14 do what I can to make those payments to buy
15 the equipment since Willy still had the
16 machines available.

17 BY MR. MANDEL:

18 Q. Well, you used the word "owed" and
19 "outstanding balances," didn't you?

20 MR. VOLYNSKY: Objection; form.

21 THE DEPONENT: I used the word
22 "outstanding balances."

23 BY MR. MANDEL:

24 Q. And we previously looked at a document
25 where you used the word "owed"; correct?

1 A. Yeah, but I see what you're saying.
2 This isn't a contract. This is just an email. It's
3 a different context.

4 Q. Mr. Magot, isn't it a fact that as of
5 October 7, 2018, you thought these were debts of
6 Super Crypto?

7 MR. VOLYNSKY: Objection; form.

8 THE DEPONENT: Yes.

9 BY MR. MANDEL:

10 Q. Now, if you -- if you look at
11 Exhibit 10, it makes reference to in addition to
12 more than a million and a half dollars storage at
13 300 per day since September 13th.

14 What's your understanding of what's
15 being referenced there?

16 A. That was a storage fee that Willy was
17 getting to store them at a warehouse.

18 Q. And had that been agreed to with
19 Blockchain?

20 A. Yes, if I recall.

21 MR. MANDEL: Let's mark as Exhibit 11 a
22 document bearing Production No.
23 DEFENDANT_4694.

24 (Plaintiff's Exhibit 11 was
25 subsequently marked for identification.)

1 BY MR. MANDEL:

2 Q. Is Exhibit 11 an email that you sent to
3 Mr. Ault on October 17th of 2018?

4 A. It appears to be.

5 Q. And here again, you refer to "remaining
6 outstanding balances" for the company; correct?

7 A. Yes.

8 Q. And, again, you list an obligation to
9 Blockchain there; correct?

10 A. Correct.

11 Q. And you considered that an obligation as
12 of October 17th, 2018; correct?

13 A. Correct.

14 MR. VOLYNSKY: Objection; form. Let me
15 get my objection --

16 (Simultaneous speaking.)

17 BY MR. MANDEL:

18 Q. What's the reason why in October of 2018
19 you were listing all the various outstanding
20 balances?

21 A. For the same reason as before.

22 Q. Do you recall whether at this point in
23 time there was discussion for how the various debts
24 of Super Crypto could be met?

25 MR. VOLYNSKY: Objection; form.

1 communicating with Blockchain?

2 A. I believe so.

3 Q. If you look at the third page of
4 Exhibit 12, 1592, BMS 1592, it appears to contain a
5 message from you -- it actually starts on the
6 previous page -- and says:

7 "I will need until Tuesday to
8 confirm all the financing but I am
9 very interested in making the
10 purchase."

11 What did you mean by confirming the
12 financing?

13 MR. VOLYNSKY: Objection; form.

14 THE DEPONENT: That I could get an
15 advance from the parent company to buy more
16 equipment.

17 BY MR. MANDEL:

18 Q. Did you have any ability to buy the
19 equipment that Mr. Kalfa was offering without an
20 advance from the parent company at that point in
21 time?

22 A. Not that I recall.

23 MR. MANDEL: Let's mark as Exhibit 13 a
24 document bearing Production No. DEFENDANT_958
25 through 975.

1 Q. Now, if you look down the thread toward
2 the bottom of the first page of Exhibit 14, in your
3 message to Mr. Kalfa, you say:

4 "We absolutely want the
5 machines but would need more time
6 to get board approval to purchase
7 the machines."

8 Who did you seek board approval from?

9 A. Mr. Horne and Mr. Ault.

10 Q. Did you actually discuss it with both of
11 them?

12 A. I don't recall, but I would imagine.

13 Q. And both of them are also board members
14 for DPW; correct?

15 A. Yes.

16 Q. And it was DPW again that you were
17 looking to fund this purchase; correct?

18 MR. VOLYNSKY: Objection; form.

19 THE DEPONENT: Ultimately, yes, from
20 DPW's funding advance.

21 MR. MANDEL: Let's mark as Exhibit 15 a
22 document bearing Production No. DEFENDANT_1147
23 to 1153.

24 (Plaintiff's Exhibit 15 was
25 subsequently marked for identification.)

1 company is very supportive and
2 wants us to make the purchase with
3 you."

4 Is it correct that as of this point in
5 time, DPW wanted you to go forward with this
6 transaction?

7 MR. VOLYNSKY: Objection; form.

8 THE DEPONENT: It appears that I did get
9 approval from them for an advance to make this
10 transaction.

11 BY MR. MANDEL:

12 Q. And was it correct that they wanted you
13 to do the purchase?

14 MR. VOLYNSKY: Objection; form.

15 THE DEPONENT: Yes, they were supportive
16 of our decision.

17 BY MR. MANDEL:

18 Q. And what was the reason why you were
19 bringing up the parent company in your communication
20 with Mr. Tencer and Mr. Kalfa?

21 A. Again, for communication purposes. I
22 wanted to be very clear, and I was with Willy along
23 the whole process, that this would be dependent on
24 my funding.

25 Q. And did you want him to have comfort

1 from the fact that the parent company was
2 supportive?

3 MR. VOLYNSKY: Objection; form.

4 THE DEPONENT: Yes.

5 BY MR. MANDEL:

6 Q. Now, you say:

7 "I was just told that I can
8 sign the agreement if we can agree
9 that the deposit of 5 percent can
10 be made by 3/7/18. We would then
11 be able to make the full payment
12 by 3/16/18."

13 Who had told you that?

14 A. That was a decision we made at the
15 Super Crypto board level.

16 Q. Well, when you say "at the Super Crypto
17 board level," was Will Horne involved in that
18 decision?

19 A. I don't recall, but he is a board
20 member, so most likely.

21 Q. Well, I'm not asking if he's a board
22 member. I'm asking you if he was involved in the
23 decision.

24 A. I don't recall.

25 Q. But you do recall Mr. Ault was involved;

1 Super Crypto?

2 A. No.

3 Q. Did he hold any position in

4 Super Crypto?

5 A. No.

6 Q. Why was he being sent this email?

7 A. Because it appears that I'm requesting
8 funds from either him and/or Mr. Ault.

9 Q. And in the email that you are
10 forwarding, that's an email that Mr. Tencer sent to
11 you earlier that same day; correct?

12 A. It appears to be, yes.

13 Q. And in it, Mr. Tencer says:

14 "Regarding your finances, I
15 spoke with Joe and seeing the
16 future potential, we would like to
17 try and accommodate your cash
18 flow."

19 A. Uh-huh.

20 Q. Do you have any understanding of what
21 discussion you had had at that point with Mr. Tencer
22 about your finances or cash flow?

23 A. Yes. This is a good example of what I
24 mentioned earlier, where I was very transparent with
25 him that I was in a position where I needed to

1 request advances, to get financing to make
2 purchases, so he understood that I didn't have the
3 cash. I had to get approval and raise the capital.

4 Q. And he understood you were raising it
5 from the parent company; correct?

6 MR. VOLYNSKY: Objection; form.

7 THE DEPONENT: I don't know if he knew
8 where I was raising it. This is an example
9 where I didn't even know.

10 BY MR. MANDEL:

11 Q. If you look at Mr. Tencer's email, he
12 suggests buying the 1100 machines now and then
13 breaking it into two separate shipments for 500 and
14 600 machines; correct?

15 A. That's right, yes.

16 Q. And so he was suggesting that to give
17 you more time to come up with the necessary funds;
18 correct?

19 MR. VOLYNSKY: Objection; form.

20 THE DEPONENT: Yes. As mentioned
21 earlier, he not only broke them up, but then
22 he emphasized the fact that if I didn't buy
23 the 600 machines, I'd lose the deposit.

24 BY MR. MANDEL:

25 Q. And he's the person, then, who actually

1 raised adding that provision to the contract;
2 correct?

3 A. In this email, he lists it. I don't
4 know if that shows he raised it. I know we had
5 discussions about it.

6 Q. And is it fair to say part of the
7 protection he expressed he was looking for was not
8 having to hold the machines indefinitely for you?

9 MR. VOLYNSKY: Objection; form.

10 THE DEPONENT: I'm not sure I understand
11 the question. Could you repeat it.

12 BY MR. MANDEL:

13 Q. Let me rephrase it.

14 The provision you're talking about as an
15 out works both ways; right? It provides an out for
16 Blockchain also; correct?

17 A. Correct. They always had the right to
18 sell the machines to someone else.

19 Q. It frees them up from having to hold the
20 machines so that they would be available for you;
21 correct?

22 A. Yes.

23 Q. And allows them to sell it to some other
24 purchaser.

25 A. Correct.

1 A. That's fair to say, yes.

2 Q. Now, in the email at the top of
3 Exhibit 21, you say:

4 "Could you review below and
5 let me know if this sounds
6 possible?"

7 Do you recall whether you ever received
8 any indication back that it was possible?

9 A. I would imagine so. We entered into the
10 agreement with very similar terms.

11 Q. And before entering into the agreement,
12 had you been assured that the funds would be
13 available to meet these obligations?

14 A. I don't know about assured. I was
15 comfortable enough to sign the agreement.

16 Q. And I assume you wouldn't sign an
17 agreement if you thought there was no ability to
18 meet the terms; correct?

19 A. Correct.

20 Q. You wouldn't just enter into the
21 agreement on the assumption that if the parent
22 company can't come up with it, who cares, because
23 Super Crypto has no funds anyway; right?

24 MR. VOLYNSKY: Objection; form.

25 THE DEPONENT: Well, we'd work to raise

1 money from whomever we could at Super Crypto.

2 BY MR. MANDEL:

3 Q. Right. You didn't intend to rely on the
4 fact that Super Crypto itself didn't have the means
5 to make this kind of payment?

6 MR. VOLYNSKY: Objection; form.

7 THE DEPONENT: Well, I hesitate on that
8 one because when we buy equipment, it produces
9 revenue, so it creates means.

10 So it was my hope that Super Crypto
11 would have means to generate its own revenue
12 and pay its own bills without advances.

13 BY MR. MANDEL:

14 Q. But you weren't going to be able to take
15 access to the machines until they were paid for;
16 correct?

17 MR. VOLYNSKY: Objection; form.

18 THE DEPONENT: Correct.

19 BY MR. MANDEL:

20 Q. So you weren't going to be able to
21 generate any revenues from these machines until they
22 were paid for; correct?

23 A. Correct.

24 Q. Do you have any understanding as of
25 March 2018 at what rate Super Crypto was generating

1 revenues itself from the other machines it had?

2 A. I don't. That goes back to our initial
3 discussion on revenues, I think.

4 Q. But you do know that the revenues it was
5 generating would never have been anywhere near
6 enough to cover the kind of obligation being
7 undertaken in this agreement; correct?

8 MR. VOLYNSKY: Objection; form.

9 THE DEPONENT: Yes, I believe so.

10 BY MR. MANDEL:

11 Q. You believe that's correct, my
12 statement; correct?

13 A. I believe that's correct.

14 MR. VOLYNSKY: Note my objection.

15 MR. MANDEL: Let's mark as Exhibit 22 a
16 document bearing Production No. DEFENDANT_1501
17 to 1514.

18 (Plaintiff's Exhibit 22 was
19 subsequently marked for identification.)

20 BY MR. MANDEL:

21 Q. Is the top email in Exhibit 22 an email
22 that you sent to Mr. Tencer on March 6th of 2018?

23 A. Appears to be.

24 Q. And in it, you say:

25 "I'm frustrated that we are

1 here again at the end of the day
2 without a signed agreement."

3 And you go on to say:

4 "Unfortunately, I'm held up by
5 people and timing that I've done
6 my best to control but have
7 clearly failed to leverage
8 according to our ideal plan."

9 What did you mean by that?

10 A. Let me read that again.

11 My idea of the plan was to buy the
12 equipment from Mr. Tencer.

13 Q. And why -- well, strike that.

14 Who was holding you up? What people are
15 you referring to?

16 A. Well, I want to get a commitment from
17 our parent company that I can get an advance in
18 order to meet the commitments of the agreement.

19 Q. And you hadn't been able to secure that
20 yet?

21 A. It appears not at this stage.

22 Q. And in the next paragraph, you say:

23 "I have emails, voice
24 messages, and texts out to the CEO
25 of our parent asking for approval

1 to sign."

2 So it's fair to say that as of March 6,
3 2018, you believe you needed approval from the CEO
4 of DPW before entering into this agreement; correct?

5 MR. VOLYNSKY: Objection; form.

6 THE DEPONENT: I think you're reading it
7 too literally. I mean, I could sign it. I'm
8 the CEO of Super Crypto. But I wouldn't be
9 comfortable signing it without knowing that I
10 would get the funding. So that's the context
11 of that sentence.

12 BY MR. MANDEL:

13 Q. So you might have the literal authority
14 to sign it as the CEO; correct?

15 MR. VOLYNSKY: Objection; form.

16 THE DEPONENT: That's what I'm saying,
17 yes.

18 BY MR. MANDEL:

19 Q. But you personally wouldn't exercise
20 that authority without a commitment from DPW;
21 correct?

22 MR. VOLYNSKY: Objection; form.

23 THE DEPONENT: I could, but I personally
24 wouldn't be comfortable without knowing that I
25 could make the payments.

1 BY MR. MANDEL:

2 Q. And the reason you wouldn't be
3 comfortable is you wouldn't want to sign a contract
4 without knowing that the funding was there; correct?

5 MR. VOLYNSKY: Objection; form.

6 THE DEPONENT: I consider that good
7 business, yes.

8 BY MR. MANDEL:

9 Q. Now, you go on to say in the email:

10 "I also want to be clear that
11 Todd (the CEO) wants to close this
12 deal as well so I expect good news
13 when we connect."

14 When you refer to Todd as the CEO, you
15 mean he's the CEO of DPW; correct?

16 A. Yes.

17 Q. And you say he wants to close this deal.

18 That was your understanding as of
19 March 6th, 2018; correct?

20 A. Yes.

21 Q. And that's based on your communications
22 with him; correct?

23 A. I imagine.

24 MR. MANDEL: Let's mark as Exhibit 23 a
25 document bearing Production No. DEFENDANT_1543

1 the record. The time is 11:15.

2 MR. MANDEL: Mr. Magot, we're going to
3 mark as Exhibit 25 a document bearing
4 Production No. DEFENDANT_1806.

5 (Plaintiff's Exhibit 25 was
6 subsequently marked for identification.)

7 BY MR. MANDEL:

8 Q. Is the top email in Exhibit 25 an email
9 that you sent to Mr. Tencer on March 21st, 2018?

10 A. It appears to be.

11 Q. And in No. 1, you write:

12 "Our CEO is still nervous over
13 the transfer process."

14 Who are you referring to in this email
15 as "our CEO"?

16 A. In that context, it would be Mr. Ault as
17 DPW CEO.

18 Q. And do you recall that Mr. Ault was
19 expressing concern about making sure that the
20 machines would be properly released once the payment
21 was made?

22 A. I do remember that that was a topic we
23 discussed, yes.

24 Q. And is it correct that the way you ended
25 up dealing with that concern was doing an escrow

1 agreement?

2 A. I believe so, yes.

3 MR. MANDEL: Let's mark as Exhibit 26 a
4 document bearing Production No. DEFENDANT_1919
5 through 1933.

6 (Plaintiff's Exhibit 26 was
7 subsequently marked for identification.)

8 BY MR. MANDEL:

9 Q. In the email -- the second email from
10 the top is an email Mr. Tencer sent to you on
11 March 22nd, 2018; correct?

12 A. It appears to be, yes.

13 Q. And in it, he says:

14 "I believe your CEO will now
15 be comfortable."

16 Do you have any understanding of what's
17 being referenced by "your CEO" in this context?

18 A. If I read my email below, I'm
19 referencing Todd Ault, the CEO of DPW, so I imagine
20 that's who Mr. Tencer is referencing as well.

21 Q. And at the top, you say:

22 "Please find the fully
23 executed Escrow instructions."

24 And if you look toward the back of the
25 document starting at 1926 and ending at 1933, does

1 document bearing Production No. DEFENDANT_1958
2 to 1960.

3 (Plaintiff's Exhibit 28 was
4 subsequently marked for identification.)

5 BY MR. MANDEL:

6 Q. And if you look at the top of
7 Exhibit 28, it appears to be an email that you sent
8 to Mr. Tencer on March 26th of 2018; correct?

9 A. It does appear to be that.

10 Q. And in it you say:

11 "The CEO of the parent company
12 DPW would like to share with you
13 the details around the timing of
14 the release from escrow."

15 Do you have any understanding of why
16 Mr. Ault would be sharing details about this
17 information at this point in time?

18 A. I think just to provide further clarity
19 on the timing of the advance they would be sending
20 Super Crypto.

21 Q. And why would that information be coming
22 from him as opposed to you?

23 A. I'm just involving him to be, again,
24 transparent as possible.

25 Q. And in the email, you say:

1 obtained from the bank?

2 MR. VOLYNSKY: Objection; form.

3 THE DEPONENT: Again, I don't recall.

4 MR. MANDEL: Let's mark as Exhibit 39 a
5 document bearing Production No. DEFENDANT_2016
6 through 2018.

7 (Plaintiff's Exhibit 39 was
8 subsequently marked for identification.)

9 BY MR. MANDEL:

10 Q. If you look at the email in the middle
11 of the page, that's a communication that Mr. Tencer
12 sent on April 9th of 2018; correct?

13 A. April 9th? Is that what you said?
14 Looks like it.

15 Q. Yeah. It says:
16 "On Monday, April 9th, 2018,
17 Willy Tencer wrote:"
18 And then you see the email below. Do
19 you see that?

20 A. I do see that.

21 Q. And in it, he says:

22 "Our position is that we have
23 no problem to work with you and
24 hold the equipment beyond our
25 agreed upon terms, as long as we

1 know that you will honor your
2 payment commitments within a
3 reasonable time."

4 Do you recall him expressing that
5 viewpoint in April of 2018?

6 A. Yes, I do. The spirit of our
7 conversations throughout.

8 Q. And did you agree to operate on that
9 basis?

10 MR. VOLYNSKY: Objection; form.

11 THE DEPONENT: On what basis?

12 BY MR. MANDEL:

13 Q. The basis that's laid out in his email.

14 A. Well, he's asking a question; right?

15 Q. Well, he's saying he has no problem
16 working with you and holding the equipment beyond
17 the agreed-upon terms "as long as we know that you
18 will honor your payment commitments within a
19 reasonable time."

20 Did you ever communicate to him that you
21 were not willing or able to work with him under
22 those conditions?

23 MR. VOLYNSKY: Objection; form.

24 THE DEPONENT: Not that I recall.

25 ///

1 BY MR. MANDEL:

2 Q. And were you attempting to work with him
3 under those conditions?

4 MR. VOLYNSKY: Objection; form.

5 THE DEPONENT: It appears we were.

6 BY MR. MANDEL:

7 Q. You didn't tell him to release any of
8 the machines at that point; correct?

9 MR. VOLYNSKY: Objection; form.

10 THE DEPONENT: I do recall having
11 conversations with Willy about, look, I
12 understand if you have to sell them to someone
13 else. I want this equipment. And I was doing
14 everything I could to, you know, get an
15 advance to pay for them. But, of course,
16 that's always his option, and I knew that was
17 a risk.

18 BY MR. MANDEL:

19 Q. But you were trying to work with him so
20 that he wouldn't do that; correct?

21 MR. VOLYNSKY: Objection; form.

22 THE DEPONENT: Yes.

23 BY MR. MANDEL:

24 Q. You wanted him to continue to hold it --
25 hold the machines for you; correct?

1 MR. VOLYNSKY: Objection; form.

2 THE DEPONENT: Yeah, I don't -- I didn't
3 want to start another process of buying
4 machines from someone else, even though I do
5 recall in this period of time prices were
6 dropping, so I could have gotten a better deal
7 somewhere else.

8 BY MR. MANDEL:

9 Q. But yet, you still wanted to complete
10 your transaction with Willy?

11 MR. VOLYNSKY: Objection; form.

12 THE DEPONENT: We had a relationship I
13 wanted to honor.

14 BY MR. MANDEL:

15 Q. And you understood that he was only
16 going to hold the equipment if you agreed to pay for
17 it; correct?

18 A. I would -- yeah, I would assume so.
19 It's logical.

20 Q. I mean, you didn't expect that you would
21 be able to obtain these machines without paying for
22 them; right?

23 MR. VOLYNSKY: Objection; form.

24 THE DEPONENT: Correct.

25 ///

1 BY MR. MANDEL:

2 Q. Now, in his email, Mr. Tencer says:

3 "The payment for the 1st batch
4 has been substantially delayed."

5 By that, he means that it's now
6 April 9th, which is a few weeks after March 23rd,
7 and you still haven't completed the payment on the
8 first 500 machines; correct?

9 MR. VOLYNSKY: Objection; form.

10 THE DEPONENT: Sounds like that.

11 BY MR. MANDEL:

12 Q. And when he says, "We are now
13 approaching the due date for the payment of the 2nd
14 batch," he's referring to the April 15th date, when
15 you would have to pay for the next 600 machines;
16 correct?

17 MR. VOLYNSKY: Objection; form.

18 THE DEPONENT: I would imagine.

19 BY MR. MANDEL:

20 Q. And your responses were -- well, strike
21 that.

22 Mr. Ault's response is:

23 "We are on a wrap up call with
24 our lender in about 1 hour. Once
25 I know when they will release

1 escrow I will email you."

2 Correct?

3 A. That's what that says, yes.

4 Q. Why is Mr. Ault taking the lead in
5 responding at this point?

6 MR. VOLYNSKY: Objection; form.

7 THE DEPONENT: Well, I imagine because
8 he's following up from their phone
9 conversation we discussed earlier.

10 BY MR. MANDEL:

11 Q. And is it also because he's the person
12 who's involved in arranging the funding that's going
13 to pay for these machines?

14 MR. VOLYNSKY: Objection; form.

15 THE DEPONENT: I would imagine.

16 BY MR. MANDEL:

17 Q. And he's the person with the best
18 information as to what funds are going to be
19 available and when they're going to be available;
20 right?

21 MR. VOLYNSKY: Objection; form.

22 THE DEPONENT: He is the agent of DPW,
23 yes.

24 BY MR. MANDEL:

25 Q. And he has more information on that than

1 you have; right?

2 MR. VOLYNSKY: Objection; form.

3 THE DEPONENT: Yes.

4 BY MR. MANDEL:

5 Q. You have to look to him to know what
6 funds are going to be available to release; right?

7 MR. VOLYNSKY: Objection; form.

8 THE DEPONENT: Just like to any lender.

9 BY MR. MANDEL:

10 Q. Do you consider DPW to be a lender?

11 A. They provided me with financing.

12 Q. Was that considered a loan?

13 A. The terms of the deal weren't ironed out
14 in the beginning. It's something that we'd work on
15 at the end.

16 Q. And when you say it wasn't ironed out,
17 there was no formal written agreement with respect
18 to DPW providing advances to Super Crypto; correct?

19 A. Yes. That's correct.

20 Q. And when you say it would be worked out
21 in the end, you mean that if the company got to the
22 point where it was financially viable, then you
23 might repay the funds that had been advanced;
24 correct?

25 MR. VOLYNSKY: Objection; form.

1 THE DEPONENT: No, it's not a matter of
2 might. The company would, in some form.

3 BY MR. MANDEL:

4 Q. So if the company became financially
5 viable, then you would pay back any advances that
6 had been made?

7 A. Yes.

8 Q. But there was no timing set on when that
9 would occur; right?

10 A. There was no agreement.

11 MR. VOLYNSKY: Objection; form.

12 BY MR. MANDEL:

13 Q. I'm sorry. You can answer.

14 A. No agreement.

15 Q. And you weren't paying any interest on
16 that; correct?

17 A. There was no terms, so no.

18 Q. And the money never was paid back;
19 correct?

20 MR. VOLYNSKY: Objection; form.

21 THE DEPONENT: Correct.

22 BY MR. MANDEL:

23 Q. Did Super Crypto borrow money from any
24 other related entities apart from DPW?

25 MR. VOLYNSKY: Objection; form.

1 A. I don't recall.

2 MR. MANDEL: Let's mark as Exhibit 50 a
3 document bearing Production No.

4 DEFENDANTS_2377 to 2379.

5 (Plaintiff's Exhibit 50 was
6 subsequently marked for identification.)

7 BY MR. MANDEL:

8 Q. If you look at the second email from the
9 top in this exhibit, Mr. Tencer indicates in an
10 email to you:

11 "We want to work with you to
12 help you fulfill your obligation,
13 but we need to understand the
14 situation to see if we can help."

15 Do you recall him expressing that
16 sentiment during this time frame?

17 MR. VOLYNSKY: Objection; form.

18 THE DEPONENT: I can read that here.

19 Yeah, I don't recall.

20 BY MR. MANDEL:

21 Q. Do you recall generally during this time
22 frame that Mr. Tencer was looking for information as
23 to when the remaining machines would be paid for?

24 A. Yes.

25 Q. And did you ever during those

1 communications say, "We are no longer interested in
2 going forward on the 600 machines"?

3 A. No.

4 Q. And at the top of Exhibit 50 is an email
5 that you sent to Mr. Tencer on May 1st of 2018;
6 correct?

7 A. It is, yes.

8 Q. And in it, you say:

9 "We are working on the
10 financing and hope to make the
11 final payment this week."

12 So as of May 1st, 2018, you were still
13 hopeful that you'd be able to pay for the remaining
14 600 machines in early May; correct?

15 A. Yes.

16 MR. MANDEL: Let's mark as Exhibit 51 a
17 document bearing Production No.
18 DEFENDANT_2394.

19 (Plaintiff's Exhibit 51 was
20 subsequently marked for identification.)

21 BY MR. MANDEL:

22 Q. Is Exhibit 51 an email that you sent to
23 Mr. Tencer on May 2nd of 2018?

24 A. It appears to be, yes.

25 Q. And in it, you say that:

1 Mr. Ault "did say that we will
2 get the machines by the end of
3 this week or early next week."

4 Do you recall discussing the timing with
5 which you would be able to get the 600 machines with
6 Mr. Ault in early May?

7 A. I don't recall that discussion.

8 Q. If you made that statement to
9 Mr. Tencer, would that have been based on a
10 conversation that you had actually had with
11 Mr. Ault?

12 MR. VOLYNSKY: Objection; form.

13 THE DEPONENT: I would assume so.

14 BY MR. MANDEL:

15 Q. You wouldn't attribute statements to
16 Mr. Ault that he hadn't made, would you?

17 MR. VOLYNSKY: Objection; form.

18 THE DEPONENT: No.

19 MR. MANDEL: Let's mark as Exhibit 52 a
20 document bearing Production No. DEFENDANT_2518
21 through 2526.

22 (Plaintiff's Exhibit 52 was
23 subsequently marked for identification.)

24 BY MR. MANDEL:

25 Q. At the top of this email thread in

1 a couple of hours of the email that we just looked
2 at cc'g Mr. Ault; is that correct?

3 A. It does appear to be, yes.

4 Q. Do you know whether, between the time of
5 Exhibit 52 and Exhibit 53, you received any input
6 from Mr. Ault on what kind of communication you
7 should convey to Mr. Tencer?

8 MR. VOLYNSKY: Objection; form.

9 THE DEPONENT: I don't recall.

10 BY MR. MANDEL:

11 Q. Would it have been your practice to seek
12 such input?

13 MR. VOLYNSKY: Objection; form.

14 THE DEPONENT: Yes.

15 BY MR. MANDEL:

16 Q. And if you look at Exhibit 53, towards
17 the bottom of the top email, you say:

18 "I really want the machines
19 and have open racks ready to take
20 them ASAP."

21 So you're continuing to express to
22 Mr. Tencer the fact that you want those 600
23 machines; correct?

24 A. Yes.

25 Q. And you cc'd Mr. Ault on that

1 communication?

2 A. I did.

3 Q. Do you have any reason to believe that
4 you would have been expressing a desire inconsistent
5 with what Mr. Ault wanted?

6 MR. VOLYNSKY: Objection; form.

7 THE DEPONENT: This is my desire. I
8 can't speak to Mr. Ault's.

9 BY MR. MANDEL:

10 Q. Right. But you are cc'g him on it, and
11 you were seeking his guidance.

12 Isn't it your understanding that
13 Mr. Ault was aligned with what you were seeking at
14 that point?

15 MR. VOLYNSKY: Objection; calls for
16 speculation.

17 But go ahead, if you can answer it.

18 THE DEPONENT: No, I can't speak to
19 that. I don't know what Mr. Ault was thinking
20 at that time.

21 BY MR. MANDEL:

22 Q. Well, you were in regular communications
23 with him during this process; right?

24 MR. VOLYNSKY: Objection; form.

25 THE DEPONENT: Yes.

1 BY MR. MANDEL:

2 Q. And if Mr. Ault had expressed to you at
3 any point during this process that he was no longer
4 interested in funding these machines, would you have
5 kept telling Willy you wanted them?

6 MR. VOLYNSKY: Objection; form.

7 THE DEPONENT: No.

8 MR. MANDEL: Let's mark as Exhibit 54 a
9 document bearing Production No. DEFENDANT_2563
10 to 2571.

11 (Plaintiff's Exhibit 54 was
12 subsequently marked for identification.)

13 BY MR. MANDEL:

14 Q. Is the top email an email you sent to
15 Mr. Tencer on May 9th, 2018?

16 A. It appears to be.

17 Q. And in it, you indicate:

18 "I just spoke with Todd who is
19 working with the NYSE to finalize
20 approval of funds to buy the
21 machines."

22 Correct?

23 A. Correct.

24 Q. And do you have any reason to believe
25 that you didn't just speak to Todd before sending

1 that email?

2 A. I do not.

3 Q. Do you have any recollection of what
4 your discussion with Mr. Ault was?

5 A. No.

6 Q. Do you have any understanding of what's
7 meant by "working with the NYSE to finalize approval
8 of funds"?

9 A. I don't recall the specifics, but I
10 would assume the parent company was trying to get
11 approval for some sort of transaction from the NYSE.

12 Q. But you don't remember what specific
13 transaction?

14 A. I do not.

15 MR. MANDEL: Let's mark as Exhibit 55 a
16 document bearing Production No. DEFENDANT_2599
17 through 2607.

18 (Plaintiff's Exhibit 55 was
19 subsequently marked for identification.)

20 MR. MANDEL: I'm sorry. It just looks
21 like it's 2599 to 2601. I misspoke.

22 BY MR. MANDEL:

23 Q. And at the top of Exhibit 55, you send
24 an email to Mr. Ault in which you say:

25 "Making sure you saw this.

1 yesterday, but the below
2 notification states that only 50K
3 was sent."

4 Does that refresh your recollection as
5 to whether \$50,000 was paid by DPW toward the
6 remaining 600 machines on or around May 18th of
7 2018?

8 MR. VOLYNSKY: Objection; form.

9 THE DEPONENT: It does appear that we
10 did wire that.

11 BY MR. MANDEL:

12 Q. And why was DPW wiring money at that
13 point in time?

14 MR. VOLYNSKY: Objection; form.

15 THE DEPONENT: In the interest of
16 acquiring equipment.

17 BY MR. MANDEL:

18 Q. So it's fair to say you were still
19 looking to purchase the equipment as of May 18th,
20 2018; correct?

21 A. Yes.

22 Q. Now, do you know at that point, as of
23 May 18th, had any consideration being given to
24 simply telling Willy, "You can sell the machines,
25 and we'll just lose our deposit"?

1 MR. VOLYNSKY: Objection; form.

2 THE DEPONENT: Well, I think our deposit
3 was already lost at this point, in my mind.
4 And I know that I had conversations with Willy
5 that, you know, if you have to, you can sell
6 the machines. I think the price of the
7 machines were dramatically lower at this
8 point.

9 So, yeah, I'm sure we had that
10 conversation.

11 BY MR. MANDEL:

12 Q. When you say the deposit was already
13 lost, what do you mean by that?

14 A. Well, that I still had the option not to
15 have to buy these, but I'd lose the deposit.

16 Q. And you say you still had the option not
17 to buy these.

18 Did you ever communicate that to Willy?

19 A. I think Willy knew that as well.

20 Q. Well, why do you say that?

21 A. Because it was in our agreement.

22 Q. Had you ever discussed that with Willy?

23 A. Yeah, we did -- I mean, as I mentioned,
24 we talked about, "I understand if you have to sell
25 these and not sell them to us."

1 Q. And that was something you think you
2 said orally?

3 A. Yes. I believe I said that to Willy on
4 the phone, but I also clearly also said, "I really
5 want the machines." You know, we had made a
6 business decision to try to move forward and still
7 acquire the equipment.

8 Q. Now, if the price of the machines had
9 declined so dramatically as of May 18, 2018, why did
10 you still want them at that point?

11 A. That was a business decision we made.
12 It's a small community, and we wanted to maintain
13 relationships. And we were also, again, optimistic
14 that the market could turn around.

15 Q. And I know you said that you told Willy
16 orally he could resell the machines, but in all the
17 communications we've looked at since the closing on
18 the first 500 machines, is there any written
19 communication where you ever stated to Willy that he
20 could go ahead and sell the machines?

21 A. I don't recall.

22 Q. And was your hope in sending the \$50,000
23 toward payment of the 600 machines to show to Willy
24 that you were still serious about purchasing them?

25 MR. VOLYNSKY: Objection; form.

1 THE DEPONENT: The 50,000, yeah. I
2 believe so, yeah.

3 BY MR. MANDEL:

4 Q. You would have no reason to send him
5 \$50,000 if you didn't want to acquire the machines;
6 correct?

7 A. That is correct.

8 Q. And you were also trying to show that
9 you had the ability to raise funds to eventually pay
10 for the full balance; correct?

11 MR. VOLYNSKY: Objection; form.

12 THE DEPONENT: Yes.

13 BY MR. MANDEL:

14 Q. In the top email, it says:

15 "We used a new account because
16 of a legal reason."

17 Do you have any understanding of what
18 that's a reference to?

19 MR. VOLYNSKY: Objection; form.

20 THE DEPONENT: I do not.

21 MR. MANDEL: Let's mark as Exhibit 60 a
22 document bearing Production No. DEFENDANT_2708
23 to 2711.

24 (Plaintiff's Exhibit 60 was
25 subsequently marked for identification.)

1 BY MR. MANDEL:

2 Q. If you look at the second email from the
3 top in Exhibit 60, it's an email from Mr. Tencer to
4 Mr. Ault. You're shown as a CC.

5 A. Uh-huh.

6 Q. And in it, he says:

7 "Will you be sending daily
8 wire deposits that you had
9 offered?"

10 Do you have any recollection that in
11 your communications with Mr. Tencer at this point in
12 time, you indicated that you would make daily wire
13 payments?

14 A. I don't remember being that specific,
15 no.

16 Q. And in your response, you don't correct
17 Mr. Tencer and say, "We never indicated that we
18 would make daily deposits," do you?

19 MR. VOLYNSKY: Objection; form.

20 THE DEPONENT: No.

21 BY MR. MANDEL:

22 Q. And what you do say is:

23 (As Read) "Todd will have a
24 plan for full payment finalized
25 this Friday to discuss with you."

1 Correct?

2 A. Yes.

3 Q. And, presumably, you made that statement
4 based on communications you had with Mr. Ault?

5 A. Presumably, yes.

6 MR. MANDEL: Let's mark as Exhibit 61 a
7 document bearing Production No.

8 DEFENDANT_2736.

9 (Plaintiff's Exhibit 61 was
10 subsequently marked for identification.)

11 BY MR. MANDEL:

12 Q. Exhibit 61 contains an email that
13 Mr. Tencer sent to you and Mr. Ault on May 25th of
14 2018; correct?

15 A. Correct.

16 Q. And in it, he says:

17 "Great speaking with both of
18 you yesterday. I feel I now have
19 a true understanding of your
20 situation. I appreciate your
21 willingness to open up."

22 Do you have any understanding or
23 recollection of what was discussed in this
24 conversation?

25 A. I don't recall.

1 Q. Would you agree that if that was your
2 decision, you needed to communicate that at some
3 point to Blockchain?

4 MR. VOLYNSKY: Objection; form.

5 THE DEPONENT: I'm not saying that's our
6 decision. I don't recall it.

7 BY MR. MANDEL:

8 Q. I know. But I'm saying -- you know,
9 you're telling me that you believed, as of this
10 point in time, you had the ability to just walk away
11 and limit your losses to whatever the deposit was on
12 the 600 machines.

13 And I'm asking you: Did you understand
14 that in order to have that option, you had to
15 affirmatively communicate at some point a decision
16 to Blockchain that you no longer wanted the
17 machines?

18 MR. VOLYNSKY: Objection; form, calls
19 for a legal conclusion.

20 THE DEPONENT: Yeah, I don't know. I
21 would have communicated eventually, I imagine,
22 if that decision was made.

23 BY MR. MANDEL:

24 Q. But it never was made, was it?

25 MR. VOLYNSKY: Objection; form.

1 person."

2 Do you -- did you believe as of May 31st
3 that Willy was acting reasonably with respect to
4 what he was asking of you in this transaction?

5 MR. VOLYNSKY: Objection; form.

6 THE DEPONENT: I do.

7 BY MR. MANDEL:

8 Q. And you go on to say:

9 "When I say he is reasonable,
10 it is evident by the fact that we
11 are under contract to pay by 4/30
12 and he is offering the extension
13 to July 15th below."

14 Do you know why you said 4/30 as opposed
15 to the 4/15 date that's in the contract?

16 A. I don't.

17 Q. Was that just an error?

18 A. I don't recall.

19 Q. And when you say, we were under contract
20 to pay by 4/30, it was your understanding as of
21 May 31st that Super Crypto was contractually
22 obligated to pay for the remaining 600 machines;
23 correct?

24 MR. VOLYNSKY: Objection; form.

25 THE DEPONENT: Under the agreement,

1 yeah.

2 BY MR. MANDEL:

3 Q. And you go on to say:

4 "Let's think about how we can
5 satisfy this company giving us
6 time to create cash."

7 What did you mean by that?

8 A. Well, that I didn't have financing, and
9 so I needed a way to get financing.

10 Q. But what did you mean by Blockchain
11 giving you time to create cash?

12 A. Just getting more time to find a way to
13 purchase the equipment.

14 Q. Okay. And do you recall what kind of
15 response, if any, you got from either Mr. Horne or
16 Mr. Ault?

17 A. I do not recall.

18 MR. MANDEL: Let's mark as Exhibit 64 a
19 document bearing Production No. DEFENDANT_2790
20 to 2792.

21 (Plaintiff's Exhibit 64 was
22 subsequently marked for identification.)

23 BY MR. MANDEL:

24 Q. At the top of Exhibit 64 is an email
25 that you sent to Mr. Ault on June 1st, 2018;

1 correct?

2 A. It appears to be, yes.

3 Q. And in the email, you say:

4 "Willy is expecting some sort
5 of wire today. If we aren't going
6 to send one, please let me know so
7 I can manage him accordingly."

8 How do you know that Willy was expecting
9 a wire?

10 A. I think it says it in the next -- the
11 email below.

12 Q. And what did you mean by managing him
13 accordingly?

14 A. That I could provide him information
15 that was accurate.

16 MR. MANDEL: Let's mark as Exhibit 65 a
17 document bearing Production No.
18 DEFENDANT_2794.

19 (Plaintiff's Exhibit 65 was
20 subsequently marked for identification.)

21 BY MR. MANDEL:

22 Q. The top email in Exhibit 65 seems to be
23 another email that you sent to Mr. Ault within about
24 an hour of the one we just looked at; correct?

25 A. It appears to be, yes.

1 2018?

2 A. It appears to be.

3 Q. And that email follows later in the day,
4 after you had sent two emails to Mr. Ault seeking
5 his input on how to communicate with Blockchain;
6 correct?

7 MR. VOLYNSKY: Objection; form.

8 THE DEPONENT: It appears that way.

9 BY MR. MANDEL:

10 Q. And in the email, Exhibit 66, you say:

11 "I'm emailing to make it clear
12 that SCM will honor our obligation
13 to finalize the purchase of the
14 last 600 machines."

15 Is it fair to say that you had received
16 input from Mr. Ault before making that
17 communication?

18 A. Sure. Yes.

19 Q. And that Mr. Ault was in agreement with
20 providing that communication?

21 MR. VOLYNSKY: Objection; form.

22 THE DEPONENT: I don't recall.

23 BY MR. MANDEL:

24 Q. Do you think it's likely that you would
25 have sent an email reaffirming your desire to

1 finalize the purchase if Mr. Ault had told you he
2 didn't want you to finalize the purchase?

3 MR. VOLYNSKY: Objection; form.

4 THE DEPONENT: Yeah.

5 BY MR. MANDEL:

6 Q. I'm sorry. You think it is likely?

7 A. No. I'm sorry. No.

8 Q. I'm assuming that you would have wanted
9 Mr. Ault to be aligned with your indication that you
10 still wanted to purchase the 600 machines; correct?

11 MR. VOLYNSKY: Objection; form.

12 THE DEPONENT: Yes, if we could come to
13 some terms.

14 BY MR. MANDEL:

15 Q. Well, when you say "come to some terms,"
16 did you ever communicate in any of these discussions
17 anything other than timing concerns?

18 MR. VOLYNSKY: Objection; form.

19 THE DEPONENT: Towards the bottom of
20 this email, we recommend a solution, an option
21 for a different term.

22 BY MR. MANDEL:

23 Q. Where the machines would be released to
24 you so they could start earning?

25 A. Yes, and we pay them back as they

1 earned.

2 Q. And that was never agreed to by
3 Blockchain; correct?

4 A. It was not. Correct.

5 Q. But they did agree to continue working
6 with you on giving you more time to make the
7 payments; right?

8 MR. VOLYNSKY: Objection; form.

9 THE DEPONENT: I don't recall.

10 BY MR. MANDEL:

11 Q. If you look at your email, Exhibit 66,
12 in the second sentence of the first paragraph, you
13 say:

14 "We however have had a number
15 of transactions occur recently, at
16 the parent company level, related
17 to acquisitions and growth. These
18 transactions created unexpected
19 delays and approvals that have
20 delayed our ability to meet the
21 original timeline/plan."

22 Do you have any understanding of what
23 you're referring to in those transactions?

24 A. I do not recall specifics, no.

25 Q. Do you have any understanding of whether

1 BY MR. MANDEL:

2 Q. This is an email that Mr. Tencer sent to
3 you on June 4th, 2018; correct?

4 A. It appears to be, yes.

5 Q. And he thanks you for your stated
6 commitment to honor your obligation regarding the
7 last 600 machines; correct?

8 A. Yes.

9 Q. And then he says:

10 "We will continue to work with
11 you to find a mutually acceptable
12 resolution."

13 Correct?

14 A. Yes.

15 Q. Does that refresh your recollection that
16 in June of 2018, Blockchain attempted to continue to
17 work with you on coming up with a timing -- a
18 timeline that you could meet with regard to
19 completing payment on the 600 machines?

20 MR. VOLYNSKY: Objection; form.

21 THE DEPONENT: I would say yes. We were
22 all clearly under water, and he had no other
23 solution, so we agreed to try to work this
24 out.

25 ///

1 BY MR. MANDEL:

2 Q. And when you say you're under -- were
3 under water, what do you mean?

4 A. Well, everyone in this space lost a lot
5 of money. He experienced losses. We experienced
6 losses.

7 And, as I mentioned before, it's a small
8 community. We tried to honor the obligations and
9 tried to work through it. I'm sure we all felt
10 optimistic that it could turn around, so...

11 MR. MANDEL: Let's mark as Exhibit 68 a
12 document bearing Production No. DEFENDANT_2822
13 to 2825.

14 (Plaintiff's Exhibit 68 was
15 subsequently marked for identification.)

16 BY MR. MANDEL:

17 Q. Is this an email that you sent to
18 Mr. Tencer and Mr. Ault on June 7th of 2018?

19 A. It appears to be, yes.

20 Q. And in it, you ask whether you can move
21 the total due from July 31st to August 15th;
22 correct?

23 A. Yes.

24 Q. And you say:

25 "This should be the last

1 Q. And by "he," I assume you're referring
2 to Mr. Ault; is that right?

3 A. I believe so.

4 Q. And when you say, "It was more of a
5 gesture," what do you mean by that?

6 A. I'm recognizing that it wasn't what he
7 expected.

8 Q. And it was a small payment relative to
9 the outstanding balance; correct?

10 MR. VOLYNSKY: Objection; form.

11 THE DEPONENT: Yes.

12 BY MR. MANDEL:

13 Q. Was it the intention, by continuing to
14 make payments, however small, to show that there was
15 still a commitment to finalize the payment on the
16 remaining 600 machines?

17 MR. VOLYNSKY: Objection; form.

18 THE DEPONENT: Yes.

19 MR. MANDEL: Let's mark as Exhibit 73 a
20 document bearing Production Nos.
21 DEFENDANT_3210 to 3212.

22 (Plaintiff's Exhibit 73 was
23 subsequently marked for identification.)

24 BY MR. MANDEL:

25 Q. Do you recognize the email at the top of

1 machines at that point in time?

2 A. I don't recall.

3 Q. And in the email, Mr. Tencer says:

4 "Please continue to show us
5 good faith and send us wires to
6 the best of your ability."

7 Is it your understanding that Blockchain
8 considered the payment of wires to be a good-faith
9 effort to pay down the 600-machine balance?

10 MR. VOLYNSKY: Objection; form.

11 THE DEPONENT: I don't know.

12 BY MR. MANDEL:

13 Q. Was it a good-faith effort on your part
14 to pay down the machines?

15 MR. VOLYNSKY: Objection; form.

16 THE DEPONENT: I don't know what "good
17 faith" means in your mind. Again, we're just
18 trying to purchase the machines still.

19 BY MR. MANDEL:

20 Q. And in it, Mr. -- in the email that
21 Mr. Tencer sent in Exhibit 76, he says:

22 (As Read) "As you can see, we
23 applied some of your past wires to
24 pay off the first warehouse
25 storage and the balance has been

1 applied to the Antminers."

2 Do you have any recollection of
3 reviewing the enclosure that showed how the account
4 stood?

5 A. I don't recall, but I can see it here.

6 Q. Would you have likely looked at the
7 statement at the time to see what the account stood
8 at?

9 MR. VOLYNSKY: Objection; form.

10 THE DEPONENT: That would be likely.

11 BY MR. MANDEL:

12 Q. And if you look at the second page, it
13 reflects a number of payments between May 18th,
14 2018, and August 7th, 2018, that were being applied
15 toward the payment of the final 600 machines;
16 correct?

17 MR. VOLYNSKY: Objection; form.

18 THE DEPONENT: I'm not sure where
19 they're applied. They're applied to a couple
20 invoices here.

21 BY MR. MANDEL:

22 Q. Well, if you look at the first invoice,
23 that's the -- strike that.

24 If you look at the entry at the top,
25 that's an invoice for 3,272,500. That was the

1 purchase price for the total 1100 machines; correct?

2 A. Correct.

3 Q. And the first four payments listed under
4 that reflect the deposit and then the payment of the
5 balance for the first 500 machines; correct?

6 A. Yes.

7 Q. And that was paid off as of April 17th,
8 2018; correct?

9 A. Appears to, yes.

10 Q. So all of the payments under that,
11 starting on May 18th and continuing through
12 August 7th, would have been toward the remaining 600
13 machines; correct?

14 MR. VOLYNSKY: Objection; form.

15 THE DEPONENT: Appears to be.

16 BY MR. MANDEL:

17 Q. And you don't have any reason to dispute
18 that those payments were made; correct?

19 A. No.

20 Q. And you don't have any reason to dispute
21 the accuracy of the accounting that Mr. Tencer
22 provided in this document, do you?

23 MR. VOLYNSKY: Objection; form.

24 THE DEPONENT: I don't.

25 ///

1 BY MR. MANDEL:

2 Q. And he's showing the balance owing as of
3 this date, August 13th, 2018, to be a little over a
4 million and a half dollars with respect to the
5 machines; correct?

6 A. I see that number here.

7 Q. And did you ever write to object to that
8 number?

9 A. No.

10 Q. Did you ever dispute it in any way?

11 A. Not that I can recall.

12 MR. MANDEL: Let's mark as Exhibit 77 a
13 document bearing Production No.
14 DEFENDANT_03732 to 3733.

15 (Plaintiff's Exhibit 77 was
16 subsequently marked for identification.)

17 MR. VOLYNSKY: Rich, can we take five
18 for the bathroom --

19 MR. MANDEL: Yeah, absolutely.

20 MR. VOLYNSKY: -- bathroom break? Yeah.

21 MR. MANDEL: Sure. Why don't we take a
22 five- to ten-minute break.

23 THE VIDEOGRAPHER: We're going off the
24 record. The time is 2:00 o'clock.

25 (Recess taken.)

1 document bearing production

2 No. DEFENDANT_4297.

3 (Plaintiff's Exhibit 86 was
4 subsequently marked for identification.)

5 BY MR. MANDEL:

6 Q. Do you recall receiving this email from
7 Mr. Tencer on or around October 26, 2018?

8 A. I don't recall.

9 Q. Separate and apart from whether you can
10 recall this specific email, do you recall at some
11 point around this time becoming aware that
12 Blockchain had indicated it was going to resell the
13 machines?

14 A. Yes.

15 Q. And did you have any communications with
16 Mr. Tencer about that after they communicated that
17 intention?

18 A. I don't recall.

19 Q. Now, are you aware of what price
20 Blockchain resold the 600 machines for?

21 A. I'm not.

22 Q. If I represent to you that the price
23 that it received was approximately \$316.40 per
24 machine for a total of \$189,840, do you have any
25 understanding of whether that price represents

1 accurately the fair market value of those machines
2 as of that time?

3 A. I wouldn't be able to answer that
4 accurately, no.

5 Q. I mean, we had looked at an email from
6 just a couple of weeks earlier where you talked
7 about the price being in the range of \$400 a machine
8 on the Bitmain website; correct?

9 A. Yes.

10 Q. Does it strike you, based on that, that
11 the \$316 price seems to be in the general ballpark
12 of what the market was offering at that point in
13 time?

14 MR. VOLYNSKY: Objection; form.

15 THE DEPONENT: Generally. Seems low,
16 but generally.

17 BY MR. MANDEL:

18 Q. It's not like you think the machines
19 were worth anything close to what you had agreed to
20 pay for them; right?

21 MR. VOLYNSKY: Objection; form.

22 THE DEPONENT: Right.

23 BY MR. MANDEL:

24 Q. Do you have any reason to believe that
25 the resale price that Blockchain achieved on the

1 Q. So does this indicate that Coolisys had
2 advanced more than \$9 million to Super Crypto?

3 A. I believe so.

4 Q. And do you know what that \$9 million was
5 used for?

6 A. Purchase of bitcoin miners.

7 Q. And then there's an entry for negative
8 2,160,000 DPW.

9 Does that indicate that DPW also
10 advanced an additional \$2 million?

11 A. Yes.

12 Q. And is Coolisys a wholly owned
13 subsidiary of DPW?

14 A. I believe so.

15 Q. I assume it's correct to say that
16 Super Crypto never paid any dividends to anyone;
17 correct?

18 A. That would be correct.

19 Q. And it never earned any profits;
20 correct?

21 A. Correct.

22 Q. Do you recall that Super Crypto had a
23 bank account for a short period of time during 2018?

24 A. Yes.

25 Q. And that account was ultimately closed

1 down by the bank?

2 A. Correct.

3 Q. And do you know why the bank closed it
4 down?

5 A. Yes.

6 Q. Why was that?

7 A. Because of the name Super Crypto. Banks
8 were very sensitive of anything crypto-related.

9 MR. MANDEL: Let's mark as Exhibit 88 a
10 document bearing Production No.
11 DEFENDANTS_4965.

12 (Plaintiff's Exhibit 88 was
13 subsequently marked for identification.)

14 BY MR. MANDEL:

15 Q. Do you recall sending this email to
16 Ms. Chupric and Mr. Horne in April of 2018?

17 A. Yes.

18 Q. And the first sentence seems to
19 reference what we were just talking about with the
20 bank shutting down Super Crypto's bank account;
21 correct?

22 A. It does.

23 Q. And then you say:

24 "Todd and I were thinking that
25 we could set up an account with

C E R T I F I C A T E

STATE OF CALIFORNIA)

) ss.:

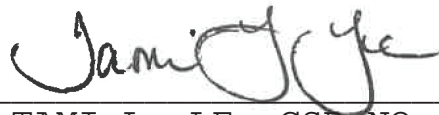
COUNTY OF ORANGE)

I, TAMI L. LE, Certified Shorthand
Reporter within and for the State of
California, do hereby certify:

That DARREN MAGOT, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by such witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 26th day of January, 2023.



TAMI L. LE, CSR NO. 8716, RPR

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